



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

**ACTION:** Interim Guidance on Applying Section 4(f)  
On Transportation Enhancement Projects and  
National Recreational Trails Projects

Date: **AUG 22 1994**

Director, Office of Environment  
and Planning

Reply to: HEP-31  
Attn of:

Regional Administrators  
Federal Lands Highway Program Administrator

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), in Section 1007(c), created "Transportation Enhancements" and identified 10 specific types of activities which could receive such funds. The ISTEA, in Section 1302, also created the National Recreational Trails Funding Program (often referred to as the Symms Act), which is designed to fund "recreational" trails projects. The objective of both of these programs is to enhance resources. In many cases, these two programs would be considered to also fall under the strict interpretation of Section 4(f) requirements since both programs, especially the National Recreational Trails, could involve working on a 4(f) protected resource. This office has received numerous regulation/policy interpretation requests on whether and how to apply Section 4(f) to these two programs.

However, ISTEA and Section 4(f) are directed towards preserving, protecting, and enhancing Section 4(f) properties. The ISTEA, by its very title, is looking for ways to make program and project delivery more efficient. Thus, it is inconceivable that these two statutes, both of which contain preservationist purposes, should be interpreted in such a manner that potential enhancement and trail project applicants would be saddled with burdensome paperwork, a rigorous alternatives analysis process, and circulation requirements which would substantially delay project implementation when the sole purpose of the project is to enhance or create a 4(f) protected resource. In keeping with the goals of the current Administration and mandates from the National Performance Review, this guidance will simplify project processing by streamlining applicable environmental requirements and review times.

This office has determined that Section 4(f) should not be applied to the National Recreational Trails Funding Program and that it should only be applied to the "Transportation Enhancements" Program when certain conditions are not met by each project. The attached interim guidance contains the basis for these determinations.

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Section 4(f) Interim Guidance  
on  
Transportation Enhancement Activities  
and the  
National Recreational Trails Program

All of our current regulations, policy, and guidance on Section 4(f) has been written to comply with 49 U.S.C. Section 303, which is the recodified version of Section 4(f) of the 1966 DOT Act. Section 303 reads as follows:

- (a) It is the policy of the United States Government that special effort be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.
- (b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities and facilities.
- (c) The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or site) only if:
  - (1) there is no prudent and feasible alternative to using that land; and
  - (2) the program or programs includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Section 138 of Title 23 U.S.C. (which applies only to the Federal-aid highway program), contains similar language, with one distinct difference. The portion of Section 138 that parallels Section 303(c) has an additional sentence at the end that reads, "In carrying out the national policy declared in this section, the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."

Because the "Transportation Enhancements" Program and the National Recreational Trails Funding Program are administered by the Federal Highway Administration (FHWA) which is an Agency of the U.S. Department of Transportation, both are subject to the provisions of Section 4(f) as programs or projects just as the Federal-aid highway program is subject to these provisions. Thus, determinations can be made at either the program or project

### Transportation Enhancement Activities

Section 1007 of ISTEA established the Surface Transportation Program (STP) Funds, of which the Transportation Enhancement Activities are a part. Currently, only the following ten activities are eligible for funding as transportation enhancements:

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archeological planning and research.
10. Mitigation of water pollution due to highway runoff.

While all of the above activities could potentially impact 4(f) resources, we have determined that of these ten activities, six (TEAs 1, 2, 3, 5, 6, and 9 as listed above) have the greatest likelihood of impacting a 4(f) resource. This is because the resource to be enhanced by the TEA project is in all likelihood a 4(f) protected resource. Therefore, the first step of the two-step process is usually satisfied, the resource is a 4(f) protected property. The second step must then be analyzed. Are we using the resource based on the three types of "use" contained in 23 CFR 771.135(p)? Upon reviewing existing regulations, policy, and guidance, we have determined that the question of "use" for TEAs 1, 3, 6, and 9 (as listed above) are already covered by existing regulations, policy, and/or guidance. The applicable regulation, policy, and/or guidance is as follows:

1. Bicycle and pedestrian facilities (TEA #1) is covered by our May 23, 1977 memorandum (copy attached) titled, "Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects." Although old, this memo is still valid.
2. Historic highway programs and the rehabilitation/operation of historic transportation buildings, structures, or facilities TEA #3 and 6 are currently covered by 23 CFR 771.135(f). This section of our regulation outlines conditions under which Section 4(f) would not apply to projects that restore, rehabilitate, or perform maintenance on transportation facilities that are on or eligible for the National Register of Historic Places. The term "facilities" is being broadly defined in this case to include buildings and structures, but they must have a transportation related history. The Scenic Highway Program (the other half of TEA #3) is merely a designation applied to existing facilities and does not grant Section 4(f) protection. Thus, a designation of

The following examples were developed to aid in making determinations on whether there is a "use" of land from a 4(f) resource on a case-by-case basis. These examples were developed in keeping with existing guidance/policy and the three determinations made above.

- A bikeway constructed in a park in a case where the bikeway is under the park agency's jurisdiction would not be a 4(f) use since the parkland is not permanently incorporated into a transportation facility, but continues to function as parkland.
- A bikeway constructed in a park in a case where the bikeway is not under the park agency's jurisdiction would be a Section 4(f) use since parkland would be permanently incorporated in a transportation facility. In this case FHWA's May 23, 1977 memorandum titled, "Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects" would apply.
- Acquisition of fee simple or easement interests in scenic or historic sites would not as a general rule be a Section 4(f) use unless the site were altered in an adverse way or the setting were disturbed in such a way that resulted in the site being permanently incorporated into a transportation facility, being temporarily and adversely occupied by a transportation facility, or being constructively used by proximity impacts from a transportation facility. Absent the above conditions, acquisition of a property interest in a scenic or historic site would not constitute a Section 4(f) use.
- Installation of interpretive facilities (signs, kiosks, etc.) for scenic or historic highways located within parks or refuges done at the request of the park or refuge manager, would not be a Section 4(f) use since the improvements would be a park or refuge amenity rather than a feature of the transportation facility (i.e. the improvements support the park/refuge function, not the transportation function and are, therefore, more properly an element of the park or refuge rather than a permanently incorporated element of the transportation facility).
- Rehabilitation of a historic transportation building, structure, or facility would not be a Section 4(f) use (See 23 CFR 771.135(f)) provided the proposed work would not adversely affect the historic qualities of the facility.
- Preservation of a historic non-transportation property would typically not be a Section 4(f) use since the property would ordinarily not be permanently incorporated into a transportation facility, and temporary adverse occupancy and constructive use would generally not be an issue.
- Archeological planning and research activities would not constitute a Section 4(f) use in those cases where the archeological field work is restricted to sites that are not being permanently incorporated into a transportation facility, or if permanently incorporated, are not important for preservation in place (See 23 CFR 771.135(g)).

3. Since most projects will occur within the boundaries of a 4(f) protected resource, owned in most cases by the funding applicant, it is unreasonable to request that the applicant seek land outside his own property to perform a project. Therefore, the evaluation of prudent and feasible alternatives to performing the project within the applicant's property boundaries is unreasonable and impractical.
4. The final receiver of funds will in most cases be either a public recreational agency or a private recreational entity. Therefore, the funds have no transportation linkage other than the role FHWA plays in administering this recreational program.
5. Discussions have been held with other Federal agencies normally involved in the funding of trail projects such as the U.S. Forest Service, the National Park Service, and the Bureau of Land Management. Although they did express some concerns about overall program implementation, they were comfortable with the approach that 4(f) should not be applied to this program.

No further work is required by our region or division offices from a Section 4(f) standpoint for the NRTFP. However, it must be remembered that NEPA and other applicable Federal laws, such as the Clean Water Act, the National Historic Preservation Act, etc., must still be complied with by the State/local applicant to obtain program funds. We suggest that this compliance be documented under our normal project development process using the NEPA document as the tool.